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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 1175 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5 - No

AMRATLAL ISHWARBHAIJOSHI

Versus

KALAKADEVI BAL VIDYAALAYA

Appearance:

MR VH DESAI for Petitioner

MR RK MISHRA for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/02/98 /11/03/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

This application is filed for taking appropriate action against the respondents under the provisions

contained in Contempt of Courts Act for non-compliance of judgment and order passed by the Gujarat Primary Education Tribunal (hereinafter referred to as 'the Tribunal') in Application No.265 of 1990 on 21st April, 1993 and also for not complying with the order passed by this Court in Miscellaneous Civil Application No.1457 of 1993 on 25th October, 1993. The applicant has further prayed that the respondents be directed to pay 18% interest on the unpaid amount till its realisation.

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#. Short facts leading to the proceedings are as under:-

The applicant whose services came to be terminated by an order dated 1st October, 1990 approached the Tribunal under Sec.40-B of the Bombay Primary Education Act. The applicant who is qualified was with the respondent School since 9th November, 1985. The grievance was made that as per rules and regulations, he was not paid dearness allowance and bonus. After 30-9-1990, applicant was not allowed to sign the muster roll and was orally ordered not to attend the School. By a registered letter dated 8-10-1990, he was served with termination order. The grievance was also made that no inquiry is ordered against him and therefore, the termination order is bad in law and should be set aside. The Tribunal, on appreciation of evidence, held that the order is bad and resultantly, quashed and set aside the order dated 1-10-1990 terminating the services of the applicant vide exh.12. The Tribunal also directed the respondents to pay dearness allowance, salary, etc. from 1-7-1990 to 30-9-1990 and also to pay salary, allowances, etc. from 1-10-1990 till the date of reinstatement by account payee cheque within a period of two months and the applicant should be paid regular salary by account payee cheque before tenth of every month. By an interim order, he was ordered to be allowed to join duties and therefore, no separate order has been passed by the Tribunal.

#. As the order passed by the Tribunal was not complied with by the respondents, applicant earlier preferred Miscellaneous Civil Application No.1457 of 1993. On 25th October, 1993, solemn assurance was given to the Court by respondents. The Court, thereafter passed the order as under:-

"Mr.Dave, Ld. Adv. appearing for the respondents states that the respondents will comply with the order passed by the Tribunal

within six months from today and that the respondents have not been able to comply with the same because of financial difficulties and also because the D.E.O. has not sanctioned the salary and maintenance bills. In view of the statement made by the Id.Adv. for the respondents, we direct the respondent to comply with the statement which is made before us, within six months from today with this direction. Notice is discharged. No order as to costs."

#. Thus, it is very clear that even in the month of October, 1993, the Court was assured that amount will be paid within a period of six months and there will be compliance with the order passed by the Tribunal. The Court directed the respondents to comply with the said statement within a period of six months. It is shocking that the applicant teacher was not paid the amount despite the order passed by the Tribunal and thereafter directions given by this Court in the month of October, 1993. It was known to the respondents that they had some financial difficulties and D.E.O. was not sanctioning the salary and the maintenance bills. It is required to be noted that despite this situation, statement was made that within six months, amount will be paid and therefore, Court directed to comply with the order within a period of six months. As the order passed by the Tribunal as also the order passed by this court were not complied with, the respondents have committed contempt, and there is no reason as to why any leniency should be shown to them. It is required to be noted that Court not only once, but on several occasions gave opportunities to the respondents. Ultimately, a Division Bench (Coram: N.J.Pandya and A.R.Dave, JJ) on February 8, 1996, with regard to the arrears, passed an order as under:-

"Now the arrears are to be cleared in the following manner:

Every month, regularly, while paying the salary for the previous month, an amount equal to monthly salary shall also be paid in addition to said monthly salary towards arrears. This shall be done without fail regularly every month.

The grievance made by respondent No.1, who is personally present, is that the petitioner-teacher is reluctant in giving signature for having received the payment. To obviate this difficulty, the petitioner is

directed to open a bank account, if he does not have already one, and the number of which shall be communicated to the respondent and the respondent shall thereafter, deposit the amount as aforesaid in the said bank account and the payment made in that account supported by the receipt issued by the concerned bank, shall be taken as due discharge of payment having been made to the petitioner-teacher. The respondent to file within one week an undertaking with all details in this regard.

Today, a sum of Rs.10,000/- has been paid by way of cheque issued in the name of the petitioner-teacher and on its realisation, that amount to be given credit towards arrears. S.O. 15-2-1996."

#. Despite the arrangements so made, no amount is paid to the applicant. When we put a pointed question to the learned advocate for the respondents, he was not able to reply as to what amount has been deposited in the bank account so opened by the applicant. Thus, it is clear that on one pretext or the other, respondents are interested in delaying the matter and in seeing that payment is delayed. Ultimately, if the amount is required to be paid, only amount of interest is to be paid because by passage of time, interest earned on the principal would be more than principal. The respondents have not acted as per the orders passed by this Court twice. Therefore, in our view, it is a fit case wherein punishment as contemplated under Sec.12 of Contempt of Courts Act must be imposed on the respondents. It is required to be noted that in the instant case, respondent No.1 is the President of the Trust and the President is also before the Court. The Trust is managed by respondent No.1. The management of School is in the hands of respondent No.2. The respondents are husband and wife. The Tribunal on appreciation of evidence on 21st April, 1993, passed an order and the applicant is required to be paid his dues from 1st July, 1990. Thus, more than seven years have passed. Till today, the applicant has not received the amount as per Tribunal's order, though five years have passed. The respondents have not thought it fit to comply with the award though statement was made before High Court on 25th October, 1993 and the Court issued direction in view of the statement and thereafter also on 8th February, 1996, order came to be passed. Yet, till this date, the amount

is not paid. It is required to be noted that in the instant case, respondents have not placed any material to show that they are entitled to recover the amount from D.E.O., for making payment to the applicant. On the contrary, the respondents are stating before us that the applicant should approach D.E.O. We have referred the statement made before the Court by the respondents. From that, it is clear that respondents are blaming others though under the orders, it is their duty to pay the amount.

#. Neither affidavit nor reply is filed explaining the circumstances under which the payment could not be made or order could not be complied with. There is one affidavit on record. But it is clear from that affidavit that the copy is not served on the applicant and therefore, such affidavit cannot be taken into consideration as it is the duty of the advocate of the respondents to see that first copy is served on the otherside and thereafter it is tendered before the Court. In view of what we have stated hereinabove, it is a fit case wherein it can be said that it is a case of a willful disobedience of the order passed by the Court and there is no reason why punishment should not be awarded as per Sec.12 of the Contempt of Courts Act.

#. Concluding portion will be declared tomorrow.

11-3-1998

#. On 12-2-1998, we have dictated the order, but the concluding portion was not dictated. However, the matter could not be placed on the board on the next day but it was placed on 6-3-1998. On that day, as the respondents were not present, the Court passed an order for issuance of non-bailable warrant. Learned advocate later on requested that the respondents shall remain present before the Court and that is how the respondent No.1 was present yesterday and the respondent Nos.1 and 2 are present today. The respondents are in habit of making statements before the Court with a view to see that the petition gets delayed and the petitioner does not get the amount. The statement made by the learned advocate on behalf of the respondents have been recorded by the Court and Court has given directions on 25th October, 1993 and February 8, 1996. These directions are not complied with.

#. We are of the view that the respondent No.1 on one reason or the other is not inclined to discharge his obligation as per order passed by the Tribunal and thereafter as per the orders passed by this Court. In the month of October, 1993, he stated before the Court that he shall comply with the order within a period of six months. Thereafter, in the month of February, 1996, again he stated that he will pay the amount by instalments and mode of payment is also indicated in the order. But thereafter, he has not respected the order. Thus, the respondents are in habit of making statements before the Court and thereafter they are not complying with their statements. Statements were made on different dates to delay the proceedings. Even today, statement is made that the respondents shall pay by instalments. We do not accept the statement of the respondents in view of conduct which is indicated.

##. The Apex Court in the case of J. Vasudevan Vs. T.R. Dhananjaya reported in AIR 1996 SC 137 has pointed out in para 14 the object of passing the order under the provisions of Contempt of Courts Act. The said para reads as under:-

"Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemnor, the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unclenching faith of the people in the Courts remain intact. But, if the order of even the highest Court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death knell to the rule of law and social justice would

receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law."

##. Considering the facts and circumstances of the case and also the Apex Court decision, ends of justice would be met with if the respondent No.1, Shri Pravinchandra Bhanushanker Mehta, who is President of the Trust, is convicted and is ordered to lodge in civil prison for a period of three months and to pay a fine of Rs.2,000/- and the respondent No.2, Smt.Devindraben Pravinchandra Mehta, is ordered to pay a fine of Rs.2,000/-. The respondents are directed to pay a sum of Rs.2,000/- by way of cost to the petitioner of this application. Amount as stated above shall be paid within a period of two weeks from 11/03/98.

##. Miscellaneous Civil Application stands disposed of accordingly. Rule made absolute.

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